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Executive Registry
73-5526
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DEPARTMENT OF STATE
WASHINGTON

September 6, 1973

Dear Bill:

I want to invite your personal attention to the problem of ensuring that all international agreements to which the United States becomes a party are cleared, prior to conclusion, with the Department of State and are submitted, after conclusion, by the Department of State to the Congress, as required by the Case Act (Public Law 92-403; 1 USC 112b). Although cooperation by the various executive departments and agencies has, in general, been most gratifying, there remain difficulties, particularly in achieving mutual understanding of the types of agreements covered by the applicable law and in assuring sufficient awareness by officers and employees of the implications for the operations of their department or agency. It may well be that a combination of new regulations and broad educational efforts within each affected department and agency will suffice to eliminate these difficulties, and I hope you will ensure that the necessary action is taken within your jurisdiction.

A recent Report by the Comptroller General, "U. S. Agreements with and Assistance to Free World Forces in Southeast Asia Show Need for Improved Reporting," B-159451, April 24, 1973, has recommended that the Congress consider legislation requiring that the Secretary of State submit annually to the Congress a list of all such subordinate and implementing agreements made involving substantial amounts of U. S. funds

The Honorable
William Colby,
Director of Central Intelligence.

State Department review

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or other tangible assistance, together with estimates of the amounts of such funds or other assistance. I believe that such legislation should be unnecessary. Certainly it is preferable to bring about full co-operation through our own efforts.

On August 15, 1973 the Department of State published in the Federal Register a Public Notice inviting comment on a proposed revision of its Circular 175 Procedure, and related procedures, regarding the authorization, negotiation and conclusion of treaties and other international agreements (38 Fed. Reg. 22084). We would appreciate the opportunity to discuss with you any particular questions or problems that you may have regarding the application of that procedure, which we hope will provide a satisfactory basis for instructions within each of the departments and agencies concerned.

In this connection, I would also note that neither the form in which an agreement is expressed nor the fact that an agreement is of a subordinate or implementing character in itself removes the agreement from the requirements of the Case Act or of the law regarding the publication of international agreements (1 U.S.C. 112a). The determination whether an instrument or a series of instruments constitutes an international agreement that is required to be transmitted to the Congress and to be published is based upon the substance of that agreement, not upon its form or its character as a principal agreement or as a subordinate or implementing agreement.

As the subject matter of our international agreements is, in general, as broad as the scope of our foreign relations, it is not practicable to enumerate every type of agreement which the Department of State should receive from the other executive departments and agencies. However, it seems clear that texts should be transmitted to the Department of State of the agreements referred to in the recommendations of the Comptroller General and of any agreements of political significance, any that involve a substantial grant of funds, any involving loans by the United States or credits payable to the United

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States, any that constitute a commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations, and any that involve continuing or substantial cooperation in the conduct of a particular program or activity, such as scientific, technical, or other cooperation, including the exchange or receipt of information and its treatment. In general, the instruments transmitted to the Congress pursuant to the Case Act, and those published (other than those classified under E. O. 11652), should reflect the full extent of obligations undertaken by the United States and of rights to which it is entitled pursuant to instruments executed on its behalf.

The fact that an agency reports fully on its activities to a given Committee or Committees of Congress, including a discussion of agreements it has entered into, does not exempt the agreements concluded by such agency from transmission to the Congress by the Department of State under the Case Act.

In the event of a question whether any particular document or series of documents constitutes an international agreement, inquiry may be made of the Assistant Legal Adviser for Treaty Affairs in the Department of State, telephone 632-1074. We look forward to your continued cooperation in ensuring compliance with these requirements.

Sincerely,

Kenneth Rush

Kenneth Rush
Acting Secretary

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Routing Slip

TO:

		ACTION	INFO.			ACTION	INFO.
1	DCI			11	IG		✓
2	DDCI		✓	12	D/PPB		
3	DDS&T		✓	13	SAVA		
4	DDI		✓	14	ASST/DCI		
5	DDO		✓	15	AO/DCI		
6	DDM&S		✓	16	EX/SEC		
7	D/DCI/IC		✓	17			
8	D/ONE			18			
9	GC	✓		19			
10	LC		✓	20			

SUSPENSE _____
Date

Remarks: Please organize a way to respond and/or implement this —

LFC
9/20/73

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